**THE HON'BLE MRS JUSTICE T.MEENA KUMARI**

**&**

**THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY**

**W.P. NO : 28014 of 1998**

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**3rd October, 2005.**

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Between:

1. Union of India, rep. By its Secretary & D.G. Posts, Ministry of Communications, Department of Posts, New Delhi 110 001 & others.

**..... PETITIONERs**

AND

1. T.Chandrasekhararao, s/o Kamalakarrao, aged about 49 years, AHRO A/Cs. HRO, RMS "Z" Division, Hyderabad-1 & another

**.....RESPONDENTS**

This Court made the following:

ORDER (Per the Honourable Smt.Justice T.Meenakumari)

The present writ petition is filed by the petitioners against the order passed in O.A.No:1260 of 1997 on 25.5.1997 by the Central Administrative Tribunal, under which the O.A. was ordered with the observations as mentioned therein.

The petitioners are the respondents and the 1st respondent is the applicant. The status of the parties will be referred to as arrayed before the tribunal.

Originally, the applicant has filed O.A.1260 of 1997 before the tribunal seeking a direction to the respondents to fix his pay under F.R. 22 (1) (a) (i) (Old F.R.22 (c) ) w.e.f.. 21.10.1993 the date on which he assumed charge of higher responsibilities and also a direction to pay the arrears. On the submission made by the learned counsel on either side before the tribunal that the present O.A. is covered by the order passed in O.A.267 of 1997 on 2.4.1997, the tribunal has

passed the following order:

The pay of the applicant when posted as AHRO in the supervisory cadre should be fixed under FR 22 (1) (a) (i) notionally. He is entitled for arrears on that basis only from one year prior to filing of this O.A. i.e., from 22.9.1996.

Aggrieved by the same, the present writ petition is filed by the respondents.

Heard the learned standing counsel for central Government and Mr.B.S.Satyanarayana, appearing on behalf of Mr.Ravi, the learned counsel for the applicant.

We have perused the material available on record and the order impugned.

It is contended by the learned standing counsel for central Government that the tribunal has mechanically passed the order impugned following the earlier order passed in O.A.No:267 of 1997, dated 2.4.1997 and the tribunal has erred in not considering the crucial issue that the time bound one promotion scheme which was introduced to solve the problem of stagnation, has facilitated the applicant to draw the Assistant Head Record Officer scale in the lower selection grade while he was working as an Accountant and therefore, at the time of his promotion to the Head Record Officer scale, he cannot seek the benefit under F.R. 22 once again.

On the other hand, Mr.B.S.Satyanarayana, representing Mr.Ravi, the learned counsel for the applicant submitted that in view of the fact that the applicant has been given the higher pay scale, he is entitled to the benefit under F.R. 22.

At this stage, it is submitted by the learned standing counsel for central Government that this matter is squarely covered by a judgment of the Apex Court reported in UNION OF INDIA V. ASHOKE KUMAR BENERJEE () wherein it is held thus:

> *"The respondent having received the benefit of F.R. 22(1)(a) in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer is not entitled to the same benefit of fresh fitment when he is regularly promoted as Assistant Engineer. This is because on his regular promotion he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when on his completion of 15 years of services he was granted scale of Asstt. Engineer For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a*

*promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post."*

In view of the submission made by the learned Standing counsel that as per the judgment of the Apex Court referred to supra, the Department has started recovering the amounts, which were already paid, We make it clear that such recoveries should not be effected in respect of the employees who were retired, but however, their pension should be refixed as per their entitlement without effecting any recovery. It is further made clear that the observations made by us, would be applicable to those who were already retired from service.

Accordingly, the order of the tribunal is modified.

Subject to the above modification, this writ petition is disposed of.

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(T.MEENAKUMARI, J)

3rd OCTOBER, 2005

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(P.LAKSHMANA REDDY,J)

gurc/dvs

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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W.P.NO:28014 OF 1998

(Order delivered by the Honourable Smt.Justice T.Meena Kumari)

3rd OCTOBER, 2005.